IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.

WRIT PETITION NO. 1942 OF 2006.

Mumbai Labour Union ... Petitioner.
V/s.
Bharatiya Kamgar Karmachari
Maha Sangh & ors. ... Respondents.

Smt. N.P. Karnik for the petitioner.

Shri G.S. Baj for respondent No.1.

CORAM : V.C.DAGA, J.

DATED : 12.4.2006.

JUDGMENT:

. Rule returnable forthwith by consent of parties. Perused petition. Heard rival parties.

2. This petition filed under Articles 226 & 227 of the Constitution of India is directed against the order dated 10.2.2006; whereby the learned Member of the Industrial Court, Thane, restrained the petitioner-Union from adducing oral evidence of other remaining witnesses and directed the Court Commissioner to return the proceedings to the Court.

The Facts:

3. The factual matrix reveals that the petitioner is a registered Trade Union recognised by respondent No.2-Company. Respondent No.1 is another registered Trade Union which had filed an application (MRTU) No. 8 of 2004 seeking a

declaration of recognised union in the respondent No.2-Company.

4. The Industrial Court, on the basis of the rival pleadings was pleased to frame issues. One of the issues framed was as under:

> . "Does the applicant prove that it has the largest membership of employees employed in the non-applicant company during the whole of the period of six calendar months immediately preceding the calendar month in which this application is made?"

The original complainant- respondent No.1 was permitted to adduce evidence and to rely upon certain documents including contribution collected from various members and the receipts issued in their favour evidencing receipt of contribution. The petitioner- original non-applicant has challenged membership of respondent No.1-Union. Contention of the present petitioner is that the receipts showing recovery of contribution are not genuine. Petitioner-Union has also filed affidavits of almost more than 244 witnesses and they were cross-examined by the respondent- original complainant. A Court Commissioner was appointed to record cross-examination of the witnesses. Considering figure of the witnesses to be examined running into more than 1000, the Industrial Court passed an order restraining the petitioner from adducing further evidence by the impugned order.

Rival Submissions:

5. Smt. Karnik, learned Counsel appearing for the petitioner-Union submits that the non-applicant petitioner herein has no option but to file affidavits of all the workers to prove that they did not pay any contribution to acquire membership of the complainant-Union. She further submits that it would not be proper for the Court to restrain or prevent the respondent herein to cross-examine the witnesses; whose affidavits are filed or going to be filed. According to her, she is entitled to file affidavits of evidence to prove her defence. It is for the respondent- original applicant to decide and make a statement whether or not they want to cross-examine affiants. They are free to file purshis before the Court that they do not want to cross-examine the remaining witnesses. In the absence of any such statements, and/or purshis on record, it was not open for the Industrial Court to restrain the non-applicant- petitioner herein; to adduce oral evidence.

6. Smt. Karnik, learned Counsel appearing for the petitioner further submitted that the evidence of each witness is bound be same, but it is very much necessary to impeach documentary evidence

sought to be relied upon by the respondent-Union. She has further submitted that she has filed affidavits of most of the member of her Union to show that none of them has acquired membership of the respondent-Union.

7. Smt. Karnik further submits that the respondent-Union is claiming that persons whose affidavits are filed by the petitioner are their members. In this view of the matter, it has become all the more necessary to produce them for their cross-examination. She, thus, submits that the impugned order is erroneous and is liable to be set aside.

8. Shri Baj, learned Counsel appearing for respondent No.1- original complainant -Union, opposed the above submissions. He submits that cross-examination of about 200 witnesses which is already on record can be read with regard to remaining witnesses. He, thus, tried to support the impugned order. He also contends that enquiry is required to be completed within a period of four months as per statutory provision. That if all the so many witnesses are allowed to be examined, then, the Court may not be able to complete the enquiry within a statutory time frame.

9. Shri Baj submits that evidence of 1433 witnesses cannot be allowed. In his submission, if the impugned order is set aside, it would result in protracting litigation.

Consideration:

10. Having heard rival parties, I may place on record that, on being asked as to whether or not, respondent No.1 wants to cross-examine the witnesses whose examination-in-chief would be tendered on affidavits. Learned Counsel for respondent No.1 declined to answer either way. He is not ready to make statement that he does not want to cross-examine affiants.

. In the aforesaid backdrop, submissions made by the petitioner need favourable consideration.

11. Cross-examination of one witness cannot be a cross-examination of other witnesses. Each witness whose examination-in-chief is being brought on record by way of affidavit has to go through the gamut of cross-examination. Else evidence would not be admissible. In order to ascertain the strength of membership , the documentary evidence sought to be relied upon by the complainant (respondent

No.1)-Union, will have to be impeached by producing oral as well as documentary evidence.

12. During the course of hearing it transpired that as per procedure adopted by the Court Commissioner, examination-in-chief is being taken on record by way of affidavit; which is immediately followed by cross-examination of that particular affiant.

13. Examination-in-chief of each and every witness in the form of affidavit cannot be shut out. If affidavits are permitted to be taken on record by way of examination-in-chief, then right to cross-examine cannot be denied.

14. This Court faced with the above situation feels that, it would be appropriate to appoint retired Judicial Officer to record cross-examination of the witnesses on day to day basis without permitting any adjournment to either of the parties, so that evidence of all witnesses can be recorded within a shortest possible time.

15. Having put the aforesaid proposal to the rival parties, they came out with agreed name of Shri V.P. Patil, retired Judge of the Labour Court, for being appointed as Court Commissioner, to record

evidence on day to day basis with specific understanding that none of the parties shall seek any adjournment on any count. The suggestion given by the rival parties is reasonable. It needs to be accepted.

16. In the above backdrop, impugned order dated 10.2.2006 passed by the Industrial Court, Thane, is quashed and and set aside. Shri V.P. Patil, retired Judge of the Labour Court, Thane, is appointed as Court Commissioner by consent of parties to record cross-examination of the affiants on day to day basis. The Court Commissioner is directed not to grant adjournment to either of the parties and record cross-examination by permitting the applicant (respondent No.1) to cross -examine the witnesses only on relevant issues. He shall record evidence right from 10.30 a.m. to 5.30 p.m.with a lunch-break of one hour. If the witnesses are not present, he shall be at liberty to close evidence of that particular witness.

17. The Court Commissioner is directed to submit his report within 8 weeks from the date of first sitting of the Court Commissioner to the Industrial Court, Thane. In the event of any difficulty, it would be open for him to approach Industrial Court, Thane, to seek appropriate order in the facts and

circumstances of the case.

18. By consent of parties, fees of the Court Commissioner for recording evidence is fixed at Rs. 50/- per witness. Petitioner-Union (Mumbai Labour Union) shall, initially, bear the cost of professional charges of the Court Commissioner, subject to the final orders of the Industrial Court in the matter of sharing costs of the Court Commissioner.

19. In the result, petition is allowed. Rule made absolute in terms of this order with no order as to costs.

(V.C.DAGA,J.)